701—26.8(422) Bank and financial institution service charges.

26.8(1) *Taxation of service charges before and after July 1, 1987.* Prior to July 1, 1987, only the service charges of a "bank" were subject to tax. On and after July 1, 1987, the service charges of all "financial institutions" are subject to tax. For the period of July 1, 2002, through June 30, 2003, inclusive, the term "service charges of financial institutions" does not include any surcharge assessed with regard to a nonproprietary ATM transaction.

a. *Bank defined.* A "bank" is an institution empowered to do all banking business, for example, an institution having the power and right to issue negotiable notes, discount notes, and receive deposits. Bank business consists of receiving deposits payable on demand and buying and selling bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks are not considered a bank for the purposes of this rule.

b. *Financial institution defined.* "Financial institutions" include and are limited to all national banks; federally chartered savings and loan associations, federally chartered savings banks, and federally chartered credit unions; banks organized under Iowa Code chapter 524; savings and loan associations and savings banks organized under Iowa Code chapter 534; and credit unions organized under Iowa Code chapter 533.

26.8(2) *Service charges characterized.* The gross receipts from "service charges" which relate to a depositor's checking account are the only gross receipts subject to tax under this rule, whether the service charges are those of a bank or of a financial institution. For the purposes of this rule, the term "checking account" is characterized with reference to its common meaning rather than any technical definition. An account in a bank or financial institution is a "checking account" if withdrawals may be made from the account by a written instrument, including but not limited to, instruments such as a check, a draft, or negotiable order of withdrawal (NOW). A checking account may or may not pay interest. NOW and Super NOW accounts are specifically included within the meaning of "checking account." Excluded from the meaning of that term are certificates of deposit. The above definition is meant to be illustrative only and not all-inclusive. In the future, other types of checking accounts may be created which are not described herein.

Since only the gross receipts of bank or financial institution service charges which relate to a "checking account" are subject to tax, the same service performed by a financial institution could be taxable or not taxable depending upon whether it was performed or not performed in relation to a checking account.

EXAMPLE: A bank's customer loses the bank's monthly statement. The bank sends the customer another monthly statement but assesses the customer's account a "duplicate statement fee." If the duplicate statement fee is assessed on a "Super NOW" account, the gross receipts of the duplicate statement fee are subject to tax. If the duplicate statement fee is assessed against a savings account, the gross receipts from the duplicate statement fee are not subject to tax.

All charges relating to a "checking account" are taxable, not only those charges relating to withdrawals from the account by check. For example, charges for withdrawals by "bank card" from a checking account would be subject to tax except for surcharges assessed with regard to nonproprietary ATM transactions during the period set out in subrule 26.8(1). Charges for withdrawals by bank card from a "savings account" would not be subject to tax.

26.8(3) *Various taxable charges.* The following are nonexclusive examples of bank or financial institution service charges which, if related to checking accounts, are subject to tax:

a. Fees for transferring funds from one account to another (if billed to a checking account).

b. Stop payment charges.

c. Debit card replacement fees.

d. Copy and research fees.

e. Bill payment fees.

f. Returned deposit item fees.

g. The fee for issuing a "certified" check. A "certified" check is drawn from a particular account. This is in contrast to a "bank cashier's" check. See below.

26.8(4) *Bank and financial institution service charges not subject to tax.* The following bank and financial institution service charges are representative of those which are usually not subject to tax by virtue of their having no relationship to checking accounts. The list is not exclusive:

a. Safe deposit box fees for safe deposit box rentals.

b. Mortgage and loan fees.

c. Fees charged by trust departments for probating estates or administering trusts, for administering agency accounts, for administering pension and profit-sharing plans, for serving as a stock transfer agent or registrar, for serving as a farm manager, and fees or commissions charged to customers for handling security transactions. However, see rule 26.7(422). As of July 1, 1987, some of their services may be taxable as "investment counseling."

d. Real estate appraisal fees. Fees collected for servicing real estate loans.

e. Fees for servicing real estate loans.

f. Fees charged for contract collection and other collections not related to the maintenance of a checking account.

g. Special lockbox handling charges.

h. Escrow agent fees.

i. Charges for handling and cashing coupons or certificates kept in the bank's possession (safekeeping charges).

j. Finance charges, including credit card charges.

k. Penalty charges (interest forfeiture) on early withdrawal for savings certificates.

l. Charges for purchasing or selling securities for customers (if not a disguise for investment counseling fees).

m. Fees charged for collecting and transferring mortgage payments for a customer (real estate collection exchange).

n. Charges for traveler's or similar type checks, bank cashier's checks, bank drafts, or money orders when these instruments have no relation to a customer's checking account.

o. Exchange fees for all check exchanges.

p. Effective May 30, 2003, fees charged by financial institutions defined in Iowa Code section 527.2 to a noncustomer that are imposed for point of sale, service charge, or access to an automated teller machine.

26.8(5) *Miscellaneous.* Fees charged to a checking account depositor which are, in essence, penalties for a depositor's failure to adhere to contractual obligations with a bank or financial institution are not subject to tax, being more in the nature of "penalties" than service charges. For example, charges for overdrafts and returned checks would not be subject to tax.

Bank service charges which are never assessed against the expense of maintaining a checking account are not subject to tax.

EXAMPLE: Bank B normally charges $10 per month for individual customer's checking accounts. However, if a customer maintains an average monthly balance of at least $750, the bank will charge only a $5 service fee. Customer C maintains an average balance in an account of $1,000 during the month of February. As a result of this, Bank B charges Customer C a service charge of $5, and Customer C never owes Bank B a service charge of $10. Customer C owes sales tax on the $5 rather than the $10 amount.

This rule is intended to implement Iowa Code section 422.43 and section 422.45 as amended by 2003 Iowa Acts, chapter 179, section 126.